

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOHN A. PARKINS, JR.
JUDGE

**NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801-3733
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January 11, 2011

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**Re: *In re Asbestos Litigation Limited to James Farrall*
C.A. No. 11C-05-257 ASB**

*Upon Defendant Atlas Turner, Inc.'s and Bell Asbestos Mines, Ltd.'s Omnibus
Motions to Dismiss*
GRANTED

Dear Counsel:

Defendants, Atlas Turner, Inc. and Bell Asbestos Mines, Ltd., filed omnibus motions to dismiss Plaintiffs' claims pursuant to Superior Court Rule of Civil Procedure 12(b)(6). Plaintiffs filed an action (C.A. No. 77) in this court in 1973 for asbestos related injuries. On November 23, 1982 Plaintiffs signed releases in that case and an order of dismissal was entered on February 1, 1983 in regards to the Defendants. Defendants argue these releases bar Plaintiffs' latest claims.

In opposing the motion, Plaintiffs argue the 1982 release does not bar their new claims because James Farrall was not diagnosed with mesothelioma until 2011. They reason that the release only applied to claims that were or could have been raised in the 1973 case and, because Mr. Farrall's mesothelioma had not yet been diagnosed, it could not have been raised.

Plaintiff base their argument on language in the release saying it applies to "claims which have been or could have been asserted against Atlas and Bell in Civil Action No. 77, 1973."¹ The earlier portion of that sentence adds clarity and states, "from any and all actions, causes of action, claims, demands *and/or unknown* personal injuries and/or losses *resulting in any way* from my exposure to asbestos or to products containing asbestos [of Defendants]."² The "court determines the parties' intent from the overall language of the document."³

This case turns on the language of the 1982 release, which the court finds is unambiguous. There is no doubt from the language of the release that the parties intended to foreclose a suit based upon then unknown diseases which are manifested later. For example, the release prohibits any suit for "known, feared and/or unknown personal injuries . . . resulting in any way from [Plaintiff's] exposure to asbestos or to products [of Defendants] containing asbestos."⁴ Elsewhere the Release provides:

¹ Plaintiffs' Response in Opposition to Defendants Atlas Turner, Inc.'s and Bell Asbestos Mines, Ltd.'s Omnibus Motions to Dismiss, Ex. A, at 1 (hereinafter Plaintiffs' Response).

² *Id.* (emphasis added).

³ *Deuley v. DynCorp Intern., Inc.*, 8 A.3d 1156, 1163 (Del. 2010) (citing *Tucker v. Albun, Inc.*, 1999 WL 1241073, at *2 (Del. Super)).

⁴ Plaintiffs' Response, Ex. A, at 1.

It is understood and agreed that this is a full and final Release to Releasees [sic] of all claims of every nature and kind including claims for contributions and indemnity and hereby releases claims that are known, unknown, suspected, unsuspected, manifested, unmanifested and/or feared to the extent provided above.⁵

There is no doubt that the references to “known and unknown” and to “unknown . . . unsuspected . . . unmanifested” injuries were intended to encompass long latency diseases such as mesothelioma. The only limitation is that such disease result “in any way . . . from [Plaintiff’s] exposure to asbestos or to products [of Defendants] containing asbestos.”⁶

“Delaware courts recognize the validity of general releases. A clear and unambiguous release will [only] be set aside where there is fraud, duress, coercion, or mutual mistake concerning the existence of a party’s injuries.”⁷ Plaintiff offers no evidence of fraud, duress, coercion, or mutual mistake.

On a final note, the court is disturbed by Plaintiff’s counsel’s effort to make a point by omitting from quotations key words or phrases which disprove her argument. In her submittal she quoted portions of the following two provisions from the Release but omitted the language printed in bold:

It is understood and agreed that this is a full and final Release to Releasees [sic] of all claims of every nature and kin **including claims that are known, unknown, suspected, unsuspected,** manifested, unmanifested and/or feared to the extent provided above.⁸

And

⁵ Plaintiffs’ Response, Ex. A, at 3.

⁶ *Id.*, Ex. A, at 1.

⁷ *Deuley*, 8 A.3d at 1163 (citations omitted) (internal quotations omitted).

⁸ Plaintiffs’ Response, Ex. A, at 3.

from any and all actions, causes of action, claims, demands and/or all consequential, punitive and exemplary damages arising out of, or in any way growing out of, any and all known, feared and/or unknown personal injuries and/or other losses resulting in any way from my exposure to asbestos or to products containing asbestos fibers which are the subject of claims which have been or could have been asserted against Atlas and Bell in Civil Action No. 77, 1973.⁹

Whether intentional or merely careless, these sorts of omissions fall far below what is expected of a Delaware lawyer and cannot continue.

Defendants' motions to dismiss are **GRANTED**.

IT IS SO ORDERED.

John A. Parkins, Jr.

⁹ *Id.* Ex. A, at 1.